

# Summary Final Decision Art 60

## Complaint

Administrative fine, Compliance order

EDPBI:ES:OSS:D:2022:338

## Background information

Date of final decision:	19 July 2021
Date of broadcast:	25 February 2022
LSA:	ES
CSAs:	DE, DK, NL, NO,
Legal Reference(s):	Article 6 (Lawfulness of processing)
Decision:	Administrative fine, Compliance order
Key words:	Data minimisation, Clients, Legitimate interest, Lawfulness of processing,

## Summary of the Decision

### Origin of the case

A data subject lodged a complaint with the NL SA against the controller, a company registered in Spain that provides hotel services. In order to register their customers, the controller asked for their identification document, and proceeded to collect the number, type and date of issue of the document in question (ID card, passport, driving licence, residence permit or identity card), first name, surname, sex, date and country of birth, using OCR, as well as capturing the photograph. The photograph was then available in the system to the hotel employees whenever the guest made use of the hotel services, allowing them to verify the client identity and room number before charging the service. The complainant submitted that the controller scanned its passport despite his opposition.

### Findings

The LSA found that the processing of the customer personal data other than the photograph was made in compliance with Article 6(1)(b) and (c) GDPR, as this information was necessary for the performance of the contract and for compliance with a legal obligation applicable to the controller. However, the LSA pointed out that the controller's collection and use of the photograph was unlawful.

The controller claimed that the processing of the photograph was made on the basis of its legitimate interest (Article 6(1)(f) GDPR). More specifically, the controller justified the need to collect the customer's photograph so that the controller's employees could control consumption and prevent fraudulent use of the facilities.

In application of Article 6(1)(f) GDPR and Recital 47 GDPR, the LSA considered that the controller's interest in controlling consumption and preventing fraud could be legitimate. However, the LSA found that the controller's use and collection of the customers' photograph was not strictly necessary for the purposes of the alleged legitimate interest, as there were less intrusive means to verify the identity of the magnetic card holder. Furthermore, the LSA found that there was no evidence of valid consent obtained by the controller for the processing of the photograph. The LSA therefore concluded that the controller had breached Article 6 of the GDPR.

Finally, the LSA noted that the controller's privacy policy did not mention the processing of customer's photography for the purposes alleged. In this respect, the LSA found that even though the controller provided an information document that referred to the photograph, they did not prove that such document was delivered to its clients, nor did it implement it.

## Decision

The LSA imposed to the controller an administrative fine of 30,000 euros for the infringement of Article 6 GDPR.

Additionally, the controller was given one month to stop collecting and processing the photographs of its customers and was required to remove all the photographs that led to the infringement found by the LSA. Finally, the LSA requested the controller to adapt its data policy accordingly.